



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 1st day of April, 2004

In the matter of the revocation of the foreign scheduled
certificate issued to

DAYSTAR AIRWAYS, LTD.
d/b/a NEVIS EXPRESS

pursuant to the provisions of section 204.7 of the Department's
Aviation Regulations

Served: June 8, 2004

Docket OST-99-5062 - 20

ORDER REVOKING FOREIGN CERTIFICATE

Summary

By this order, we revoke for reason of dormancy the foreign scheduled air transportation certificate issued to Daystar Airways, Ltd., d/b/a Nevis Express (Daystar).

Background

Daystar holds a certificate authorizing it to engage in scheduled passenger air transportation between points in the U.S., on the one hand, and the islands of Nevis and St. Kitts, West Indies, on the other.¹ Daystar operated under that authority until March 7, 2003, when the carrier ceased operations under its certificate when the Federal Aviation Administration (FAA) revoked Daystar's Air Carrier certificate.²

Section 204.7 of the Department's Aviation Regulations (14 CFR 204.7) provides that, if a carrier ceases conducting the air transportation operations for which it was found fit, it may not resume nor advertise such services until its fitness to do so has been redetermined by the Department. Section 204.7 further provides that, if a carrier does not have its fitness redetermined and resume operations within one year of the date of its cessation, its certificate authority will be revoked for dormancy.

¹ See Order 2001-5-29, issued May 22, 2001.

² The FAA issued an emergency order on March 7, 2003, to revoke Daystar's certificate, citing violations of FAA rules, including failure to maintain an operating base in U.S. territory. On April 4, 2003, the revocation order was changed to an order of suspension, pending the carrier's compliance with FAA requirements.

By letters dated March 20 and December 19, 2003, the Department reminded Daystar of the provisions of section 204.7. Among other things, the letters stated that, if Daystar did not have its fitness redetermined and resume operations by March 7, 2004, the Department would revoke its certificate authority at that time for reason of dormancy. These letters further stated that, if Daystar was not able to recommence operations by March 7, 2004, it could request a waiver from the requirements of section 204.7, but would have to establish “good cause” for us to grant such a request. In showing good cause, Daystar would have to provide adequate evidence that it still meets the Department’s fitness criteria and that it has completed nearly all of the steps to resume operations (*e.g.*, has the necessary personnel, financial resources, and aircraft, and that it is well advanced in its FAA re-certification process).

On January 8, 2004, Daystar requested a 90-day extension to submit information to the Department pertaining to the company’s fitness. By letter dated January 30, 2004, we deferred action on Daystar’s extension request because the carrier had not provided information indicating any progress in resuming operations. In doing so, we noted that Daystar had not demonstrated that there was “good cause” to grant its request. We advised Daystar that it had until March 7, 2004, to provide additional information in support of its extension request. We received no further information from Daystar. By letter dated March 26, 2004, the Department denied Daystar’s extension request. Under these circumstances, we are revoking Daystar’s foreign scheduled certificate for reason of dormancy.

ACCORDINGLY, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We revoke the certificate of public convenience and necessity issued by Order 2001-5-29 to Daystar Airways, Ltd. d/b/a Nevis Express authorizing it to engage in foreign scheduled passenger air transportation.³
2. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order shall become effective on the 61st day after its submission for section 41307 review or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department’s order under that section, whichever occurs earlier.⁴
3. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

³ Revocation of Daystar’s foreign certificate is subject to Presidential review under 49 U.S.C. 41307.

⁴ This order was submitted for section 41307 review on April 1, 2004. The 61st day is June 1, 2004. Since the President or his designee did not disapprove this order before that date, it became effective on June 1, 2004.

The action taken in this order shall be effective immediately and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

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<http://dms.dot.gov>*

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